

**REMARKS/ARGUMENTS**

Claims 1-3 and 5-19 are currently pending in the above-referenced application. Claim 4 has been withdrawn, Claims 1, 5-8, 11, 12, 14, 15, and 17 are amended, and Claims 18 and 19 are newly added. No new matter has been introduced by this Amendment. Entry and consideration of this paper is respectfully requested.

**Preliminary Amendment**

Applicant appreciates the Examiner calling attention to the fact that no preliminary amendment was contained in the record as of the mailing of the above-referenced Office Action. To ensure a proper file history is maintained, Applicant has attached hereto a copy of the Preliminary Amendment filed via Certificate of Mailing on August 2, 2002. However, Applicant asserts that the subsequent amendments, which were considered by the Examiner as part of the current Office Action, render moot the Preliminary Amendment.

**Response to Rejection Under 35 U.S.C. §101**

Claims 12-17 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. The Examiner recommended recitation of a computer within the body of the claim. Applicant respectfully traverses the Examiner's rejection, as Claim 12 recited an inventory database. However, in an effort to expedite allowance of the pending claims, Applicant has amended Claim 12 to further clarify the role of the database in the remaining claim elements, thereby rendering the Examiner's rejection moot. Applicant respectfully requests that the Examiner withdraw his rejection of Claims 12-17.

**Response to Rejection Under 35 U.S.C. §112**

The Examiner also rejected Claims 12-17 under 35 USC §112, second paragraph as being indefinite. The Examiner asserted that the scope of the invention is unclear because of the above §101 rejection. As Applicant has overcome the §101 rejection for the reasons set forth above, Applicant asserts that the Examiner's §112 rejection is also overcome. Withdrawal of the rejection is requested.

**Response to Rejection Under 35 U.S.C. §102**

The Examiner rejected Claims 1-17 under 35 U.S.C. §102(e) as being anticipated by Salvo et al., U.S. Patent No. 6,341,271 (hereafter “Salvo”), Jammes et al., U.S. Patent No. 6,484,149 (hereafter “Jammes”), Peterson et al., U.S. Patent No. 6,324,522 (hereafter “Peterson”) and Hennig et al., U.S. Patent No. 6,587,827 (hereafter “Hennig”). Applicant respectfully traverses the Examiner’s rejection. Applicant also asserts that the Examiner’s rejections under 35 U.S.C. §102 were vague, arbitrary, and capricious, and do not provide a solid grounds upon which Applicant can accurately respond. However, in an effort to expedite the issuance of a Notice of Allowance, Applicant has carefully studied the references cited by the Examiner in an effort to divine a basis for the Examiner’s rejection and has amended the claims to more clearly describe characteristics of Applicant’s invention that distinguish the claimed invention over the references cited. Applicant respectfully submits the following arguments, based on Applicant’s interpretation of the references and Applicant’s supposition as to the basis for the Examiner’s rejection. Applicant respectfully reserves the right to withdraw and/or amend the arguments set forth below in light of additional information supplied by the Examiner.

Applicant’s invention, as recited in independent Claims 1 and 12, is directed to an inventory management system that allows a salesperson or customer to monitor, in real time, the current inventory levels so that the salesperson or customer can better manage their expectations with respect to delivery of the ordered items. For example, in the wine business, it is advantageous for a winery’s salesperson (or the winery’s distributor(s)) to know how many cases of a given vintage are still available before committing to delivering such wines to a customer. In the event the vintage is highly sought after, overcommitment by the salesperson can result in poor customer relations, at the least, and may even result in breach of contract or other legal actions. Thus, providing real time inventory quantities can result in significant improvements in customer relations, as well as other efficiencies. The advantages of such an approach are described in the specification, and Applicant asserts that Applicant’s approach, as recited in Claims 1 and 12, was not anticipated by any of the references cited by the Examiner.

As described above, the goal of Applicant's invention is to disseminate accurate, real time inventory information. Unlike Applicant's invention, Peterson teaches updating inventory information in batch form (Column 14, lines 23-32), rather than using real time data. Although Peterson does suggest that real time data access is contemplated, Applicant asserts that the Peterson reference does not enable one skilled in the art, as of the priority date of the instant application, to access inventory information in real time as recited in Applicant's claims. As the Court of Appeals for the Federal Circuit stated in Elan Pharmaceuticals, Inc. v. Mayo Foundation for Medical Educ. and Research, 346 F.3d 1051 (Fed.Cir. 2003), "The disclosure in an assertedly anticipating reference must be adequate to enable possession of the desired subject matter. It is insufficient to name or describe the desired subject matter, if it cannot be produced without undue experimentation. The principles underlying application of the criteria of enablement to the content of the prior art were discussed in In re Donohue, 766 F.2d 531 (Fed.Cir.1985): "It is well settled that prior art ... must sufficiently describe the claimed invention to have placed the public in possession of it. Such possession is effected if one of ordinary skill in the art could have combined the publication's description of the invention with his own knowledge to make the claimed invention. Accordingly, even if the claimed invention is disclosed in a printed publication, that disclosure will not suffice as prior art if it is not enabling. It is not, however, necessary that an invention disclosed in a publication shall have actually been made in order to satisfy the enablement requirement." Id. at 533. See also, In re Borst, 52 C.C.P.A. 1398, 345 F.2d 851, 855, 145 USPQ 554, 557 (1962) ("the disclosure must be such as will give possession of the invention to the person of ordinary skill. Even the act of publication or the fiction of constructive reduction to practice will not suffice if the disclosure does not meet this standard."). Therefore, to be an enabling, and therefore an anticipatory reference, a reference cited by the Examiner must enable one of ordinary skill in the art to make or practice the invention without undue experimentation, as evaluated based on the knowledge of one of ordinary skill in the art as of Applicant's priority date.

Applicant respectfully asserts that the Peterson reference does not enable one of ordinary skill in the art to disseminate inventory information in real time. This is reinforced in Column 2, lines 10-19 of the Jammes reference. Jammes states that "Many merchants now

RESPONSE

Examiner: FISCHER, Andrew J.

Serial No. 09/769,294  
Atty. Docket No.: 53881.010100

operating electronic stores simply lease Web server resources from a Web service provider and hire skilled technicians to periodically update store Web pages. These merchants thus have no direct control over their electronic stores and have no automated way of taking information from an existing inventory control system and moving that information into a collection of Web pages” (emphasis added). (Column 2, lines 19-22). Because merchants had no direct control over their electronic stores and no way of taking information from an existing inventory control system and moving that information into a collection of Web pages, Applicant asserts that one of ordinary skill in the art would not, based on the Peterson patent, have been enabled to create a real time inventory control system.

That real time inventory access was not known to one of ordinary skill in the art as of the priority date afforded the instant application is further reinforced by the Hennig reference. Hennig states that “Most known conventional customer order fulfillment processes generally include complex internal distribution systems, warehouse processes, procurement processes, customer order placement processes, and may or may not include the capability of forecasting inventory levels. Most of these processes are done manually in that they are at least partially done with the use of considerable human intervention... [A]nother object of the present invention is to provide ... an improved method and system that is designed to receive customer orders, ... process the orders by immediately shipping the products and billing the customer, and periodically synchronize the available inventory...without human intervention.” (Column 1, lines 15-63). Periodic inventory updates were, as described in Hennig, at best the standard in the industry (it was an object of Hennig to even meet that limited standard) at the time Hennig was filed (October 22, 1999, approximately three months before Applicant’s priority date). Clearly, real time inventory dissemination was not known to one of ordinary skill in the art as of the priority date of the instant application.

That real time inventory access was not known to one of ordinary skill in the art as of the instant application’s priority date the instant application is further reinforced by the attached article from the September 20, 2004 issue of Information Week. The article describes the inventory managements of E.&J. Gallo Winery (“Gallo”), the largest wine producer in the world. Gallo is ranked as number one in the 2004 version of Information Week’s annual rankings of the best users of technology “because of successful innovation

RESPONSE

Examiner: FISCHER, Andrew J.

Serial No. 09/769,294

Atty. Docket No.: 53881.010100

across its business practices, technology methods, and IT-staff management. The company has a long history of forward-thinking technology practices, as reflected by previous Information Week 500 rankings: third in 2003, ninth in 2002, 30<sup>th</sup> in 2001, and 177<sup>th</sup> in 2000. A lot of people recognize them as an innovative sales and marketing company...[m]uch of that is being able to manage their technology effectively.” (P. 31, second column). Gallo, which had estimated revenues of \$1.8 billion in 2002, has been “leading the way” in a wine industry that is “using technology to drive efficiency”. (P. 31, second column). “Though the company is quiet about its operations, it wants shoppers to know exactly where to find its products. Gallo is achieving this through a new product-accountability system, which has just been implemented at regional distribution centers. The system’s purpose is to make inventory accessible in real time to the winery’s 630 distribution customers. It includes a complex manufacturing work-order system, also known as a warehouse-management system, that coordinates production, component replenishment, inventory, and shipment.” (P. 32, second column; *emphasis added*). Even a company as large as Gallo, which has a history of technological innovation, which has the resources to devote to such innovation, and which stands to make significant profits from real time inventory information dissemination, only recently began the use of systems which permit dissemination of such information. If a company such as Gallo, which by industry measures was at the forefront of technology, was not in possession of the ability to make inventory information available in real time, Applicant asserts that real time access to inventory levels was clearly not within the knowledge of one of ordinary skill in the art at the time Applicant’s invention was filed. Therefore, one of ordinary skill in the art in January of 2000, the priority date afforded the instant application, would not have been able, based on his or her own knowledge and the knowledge gleaned from the Peterson reference, to provide real time access to inventory information. Applicant respectfully requests that the Examiner withdraw his rejection of Claims 1-17 35 U.S.C. §102(e) over Peterson.

Still further, the Peterson reference does not teach or suggest pushing inventory information to a client, as recited in Applicant’s independent claims 1 and 12. The Court of Appeals for the Federal Circuit has consistently held that “Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention,

RESPONSE

Examiner: FISCHER, Andrew J.

Serial No. 09/769,294  
Atty. Docket No.: 53881.010100

**arranged as in the claim.”** Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). Peterson clearly fails to teach or suggest structure positively recited and claimed in Applicant’s independent claims arranged as in the claim. Applicant therefore respectfully requests that the Examiner withdraw his rejection of independent Claims 1 and 12 under 35 U.S.C. §102(e) over Peterson.

Claims 2, 3, and 5-11, depend from Claim 1, and Claims 13-19 depend from Claim 12. The Court of Appeals for the Federal Circuit has consistently held that where a claim is dependent upon a valid independent claim, the independent claim is *a fortiori* valid because it contains all the limitations of the independent claim plus further limitations. See, e.g., Hartness Intern. Inc. v. Simplimatic Engineering Co., 819 F.2d 1100, 1108 (Fed. Cir. 1987). Applicant reasserts the arguments above for each of the dependant claims, and respectfully requests that the Examiner find the claims patentable over Peterson. The Court of Appeals for the Federal Circuit has consistently held that “Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim.”** Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). Peterson clearly fails to teach or suggest structure positively recited and claimed in Applicant’s independent claims arranged as in the claims. Therefore, Applicant respectfully requests that the Examiner withdraw his rejection of the dependent claims over Peterson.

The Jammes reference teaches systems and methods for viewing product information, and methods for generating web pages which permit a merchant to organize and advertise descriptions of product inventory over the Internet, which permits web page information to be extracted on-demand from a product inventory database, and permits web pages to be automatically customized to fit shopping behaviors of individual consumers (Abstract). Jammes teaches that “In one implementation of the Merchant Workbench, before transmitting the HTML text file 1924 to the Web browser, the Web server queries the product information database to examine the availability status of each product. One of ordinary skill will understand that a product ID value may be used to query an availability status field associated with each product. If it is determined that a product is not available,

RESPONSE

Examiner: FISCHER, Andrew J.

Serial No. 09/769,294

Atty. Docket No.: 53881.010100

then the hyperlink associated with the unavailable product is removed from the HTML text file. It will thus be appreciated that a product availability query permits a single product information database to support both electronic store product sales and physical store sales. ... For example, a physical store sells barcoded products which are passed by a barcode reader when sold. The reading of the barcode results in removing the unit product sold from the inventory on hand as indicated in the product information database (or inventory control system). By checking inventory on hand as indicated in the product information database, an electronic store implemented with the Merchant Workbench recognizes inventory fluctuation resulting from sales made by a physical store. A physical store, as used herein, refers to a store from which consumers place orders for products by voice over the telephone, by a delivery service such as U.S. mail, while physically present at the physical store, or other means not utilizing a computer network.” (Column 48, lines 1-25). However, while Jammes teaches checking inventory levels, such inventory checking is performed after an order is placed, and is not done in real time. This is reinforced later in the Jammes reference: “It will be further understood that, if insufficient inventory is available, a Web page may be transmitted to the consumer describing that the consumer’s order could not be processed for insufficient inventory, or displaying some other explanatory message.” (Column 50, lines 48-53). Clearly, Jammes does not teach or suggest pushing real time inventory information to a client, as recited in Applicant’s independent claims 1 and 12.. The Court of Appeals for the Federal Circuit has consistently held that “Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim.**” Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). Jammes clearly fails to teach or suggest structure positively recited and claimed in Applicant’s independent claims arranged as in the claim. Applicant therefore respectfully requests that the Examiner withdraw his rejection of independent Claims 1 and 12 under 35 U.S.C. §102(e) over Jammes.

Claims 2, 3, and 5-11, depend from Claim 1, and Claims 13-19 depend from Claim 12. The Court of Appeals for the Federal Circuit has consistently held that where a claim is dependent upon a valid independent claim, the independent claim is *a fortiori* valid because it contains all the limitations of the independent claim plus further limitations. See, e.g.,

RESPONSE

Examiner: FISCHER, Andrew J.

Serial No. 09/769,294  
Atty. Docket No.: 53881.010100

Hartness Intern. Inc. v. Simplimatic Engineering Co., 819 F.2d 1100, 1108 (Fed. Cir. 1987).

Applicant reasserts the arguments above for each of the dependant claims, and respectfully requests that the Examiner find the claims patentable over Jammes. The Court of Appeals for the Federal Circuit has consistently held that “Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim.**” Lindemann Maschinenfabrik Gmbh v. American Hoist & Derrick, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). Jammes clearly fails to teach or suggest structure positively recited and claimed in Applicant’s independent claims arranged as in the claims. Therefore, Applicant respectfully requests that the Examiner withdraw his rejection of the dependent claims over Jammes.

Hennig is directed to an order fulfillment processing system and method in which one or more client computers connects through a server to a plurality of supplier computers to fulfill customer generated orders, in which the server periodically synchronizes inventory between the client and all suppliers. (Abstract). Hennig teaches that the inventory information should be synchronized periodically, based on a timeout period. “A timeout associated with an inventory-synchronization event or a status check event may be quite short for a supplier that supplies thousands of products in a short time. In that event, the timeout may be as short as one minute or less. Lesser volume suppliers may have a timeout duration of approximately 15 minutes, for example. Suppliers that only infrequently supply products may have a timeout duration of several hours. The important consideration is that the timeout be of sufficiently small duration to ensure that adequate information relating to the operation of the system is communicated among the client, the server and the individual suppliers to assure reliable operation.” (Column 5, lines 21-33). Hennig clearly does not teach or suggest pushing inventory information to a client, as recited in Applicant’s independent Claims 1 and 12. The Court of Appeals for the Federal Circuit has consistently held that “Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim.**” Lindemann Maschinenfabrik Gmbh v. American Hoist & Derrick, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). Hennig clearly fails to teach or suggest structure positively recited and claimed in Applicant’s independent claims arranged as in the claim. Applicant therefore



RESPONSE

Examiner: FISCHER, Andrew J.

Serial No. 09/769,294  
Atty. Docket No.: 53881.010100

respectfully requests that the Examiner withdraw his rejection of independent Claims 1 and 12 under 35 U.S.C. §102(e) over Hennig.

Claims 2, 3, and 5-11, depend from Claim 1, and Claims 13-19 depend from Claim 12. The Court of Appeals for the Federal Circuit has consistently held that where a claim is dependent upon a valid independent claim, the independent claim is *a fortiori* valid because it contains all the limitations of the independent claim plus further limitations. See, e.g., Hartness Intern. Inc. v. Simplimatic Engineering Co., 819 F.2d 1100, 1108 (Fed. Cir. 1987). Applicant reasserts the arguments above for each of the dependant claims, and respectfully requests that the Examiner find the claims patentable over Hennig. The Court of Appeals for the Federal Circuit has consistently held that “Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim.**” Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). Hennig clearly fails to teach or suggest structure positively recited and claimed in Applicant’s independent claims arranged as in the claims. Therefore, Applicant respectfully requests that the Examiner withdraw his rejection of the dependent claims over Hennig.

Salvo teaches an inventory management system and method which automatically monitors inventory amounts, provides information concerning inventory, and decides if an order for replacement inventory should be placed. Salvo does not teach or suggest pushing inventory information to a client, as recited in Applicant’s independent Claims 1 and 12. The Court of Appeals for the Federal Circuit has consistently held that “Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim.**” Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). Salvo fails to teach or suggest structure positively recited and claimed in Applicant’s independent claims arranged as in the claims. Therefore, Applicant respectfully requests that the Examiner withdraw his rejection of Claims 1 and 12 over Salvo.

Claims 2, 3, and 5-11, depend from Claim 1, and Claims 13-19 depend from Claim 12. The Court of Appeals for the Federal Circuit has consistently held that where a claim is dependent upon a valid independent claim, the independent claim is *a fortiori* valid because

RESPONSE

Examiner: FISCHER, Andrew J.

Serial No. 09/769,294  
Atty. Docket No.: 53881.010100

it contains all the limitations of the independent claim plus further limitations. See, e.g., Hartness Intern. Inc. v. Simplimatic Engineering Co., 819 F.2d 1100, 1108 (Fed. Cir. 1987). Applicant reasserts the arguments above for each of the dependant claims, and respectfully requests that the Examiner find the claims patentable over Salvo.

**Response to Rejection Under 35 U.S.C. §103**

Applicant assumes that all of claims 1-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over either Salvo, Jammes, Peterson or Hennig as the Examiner did not indicate which claim is, or claims are, rejected under §103(a) in the Office Action (paragraph 15). If the Applicant's assumption is incorrect, the Examiner is requested to notify the undersigned, and Applicant reserves the right to withdraw and/or amend the arguments made herein. Applicant also asserts that the Examiner's rejections were vague, arbitrary, and capricious, and do not provide a solid grounds upon which Applicant can accurately respond. However, in an effort to expedite the issuance of a Notice of Allowance, Applicant has carefully studied the references cited by the Examiner in an effort to divine a basis for the Examiner's rejection. Applicant respectfully submits the following arguments, based on Applicant's interpretation of the references and Applicant's supposition as to the basis for the Examiner's rejection. Applicant has amended Claims 1 and 12 to more clearly describe characteristics of Applicant's invention that distinguish the claimed invention over the references cited. Applicant respectfully reserves the right to withdraw and/or amend the arguments set forth below in light of additional information supplied by the Examiner.

Still further, the Examiner did not provide any motivation, absent hindsight, for one skilled in the art to combine any or all of the references cited to create Applicant's invention. As stated by the Court of Appeals for the Federal Circuit, "The obviousness standard requires a return to the time the invention was made. 'The invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time.... That which may be made clear and thus 'obvious'...with the invention fully diagrammed and aided ... may have been a breakthrough of substantial dimension when first unveiled.'" Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1050 (Fed. Cir. 1988) (citing Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1138, (Fed. Cir. 1985 and W.L. Gore & Assocs. v. Garlock, 721 F.2d 1540, 1551 (Fed. Cir. 1983)). "When prior art references require selective

combination ... to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself.” Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143 (Fed. Cir. 1985). See also Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017. Citing references which merely indicate that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that the combination of claimed elements would have been obvious. Ex parte Hiyamizu 10 USPQ2d 1393 (BPAI 1988). “‘Determination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention.’ ATD Corp. v. Lydall, Inc., 159 F.3d 534, 546 (Fed. Cir. 1998). There must be a teaching or suggestion within the prior art, within the nature of the problem to be solved, or within the general knowledge of a person of ordinary skill in the field of the invention, to look to particular sources, to select particular elements, and to combine them as combined by the inventor. See, Ruiz v. A.B. Chance Co., 234 F.3d 654, 665, (Fed. Cir. 2000); ATD Corp., 159 F.3d at 546; Heidelberger Druckmaschinen AG v. Hantscho Commercial Prods., Inc., 21 F.3d 1068, 1072 (Fed. Cir. 1994) (‘When the patented invention is made by combining known components to achieve a new system, the prior art must provide a suggestion or motivation to make such a combination.’).” Crown Operations Intern., Ltd. v. Solutia Inc., 289 F.3d 1367, 1376 (Fed. Cir. 2002). There is no suggestion in any individual prior art reference of the combination of elements recited in the claim, nor is it suggested by the prior art as a whole.

Applicant asserts that none of the references, either alone or combination, teach or suggest pushing inventory information to a client. In support of this proposition, Applicant reasserts the arguments set forth above with respect to the rejections under 35 U.S.C. §102. It is well established that, in order to show obviousness under 35 U.S.C. §103, all limitations must be taught or suggested by the prior art. In Re Boyka, 180 U.S.P.Q. 580, 490 F.2d 981 (CCPA 1974); MPEP § 2143.03. It is error to ignore specific limitations distinguishing over the references. In Re Boe, 184 U.S.P.Q. 38, 505 F.2d 1297 (CCPA 1974); In Re Saether, 181 U.S.P.Q. 36, 492 F.2d 849 (CCPA 1974); In Re Glass, 176 U.S.P.Q. 489, 472 F.2d 1388

RESPONSE

Examiner: FISCHER, Andrew J.

Serial No. 09/769,294  
Atty. Docket No.: 53881.010100

(CCPA 1973). Therefore, Applicant respectfully requests that the Examiner withdraw his rejections of Applicant's claims under 35 U.S.C. §103.

Applicant further asserts that the Salvo reference teaches away from Applicant's claimed invention. The Salvo system includes a storage for inventory, an indicator for monitoring and reporting the level of current inventory, and a controller for receiving information from different inventory suppliers and for integrating such information with information on current inventory amounts and estimated future use to decide if an order for replacing inventory should be made. (Abstract). Salvo teaches, however, that the "plant management obtains the analyzed information in an end form, without seeing the raw data that has been analyzed. ... Accordingly, plant management does not see ... the processes used by the control unit to analyze the information, and merely obtains the analyzed information." (Column 7, lines 27-37). Applicant's invention clearly recites providing what Salvo would consider to be raw inventory information to an end user via a client, rather than hiding the information from the end user. The Court of Appeals for the Federal Circuit has consistently held that it is "error to find obviousness where references 'diverge from and teach away from the invention at hand'." In re Fine, 5 U.S.P.Q. 2d 1596, 1599 (Fed. Cir. 1988). Applicant therefore respectfully requests that the Examiner withdraw his rejection of Claims 1-17 under 35 U.S.C. §103 in view of Salvo.

Applicant also asserts that the Peterson reference teaches away from Applicant's claimed invention. The Peterson reference teaches an electronic information network for inventory control and transfer, which includes a process for distributing items, especially industrial maintenance repair and ordering (MRO) parts and supplies. This is achieved by interconnecting a plurality of vendors via a network, and permitting the vendors to communicate to the other vendors the current inventory quantity and current price of each item the vendor has for sale. However, Peterson specifically teaches that "A vendor may, of course, underreport the total number of the item that the vendor possesses..." (Column 3, lines 43-47). The underreporting of the inventory levels clearly teaches away from Applicant's invention, because it does not permit dissemination of accurate, real time inventory information. The Court of Appeals for the Federal Circuit has consistently held that it is "error to find obviousness where references 'diverge from and teach away from the

RESPONSE

Examiner: FISCHER, Andrew J.

Serial No. 09/769,294  
Atty. Docket No.: 53881.010100

invention at hand'." In re Fine, 5 U.S.P.Q. 2d 1596, 1599 (Fed. Cir. 1988). Applicant therefore respectfully requests that the Examiner withdraw his rejection of Claims 1-17 under 35 U.S.C. §103 in view of Peterson.

Peterson also teaches a system in which "Vendors electronically send their inventory data files for each manufacturer they represent to the information network and the files are merged with the manufacturer's data and other network member's inventories under the same network listing. The merged data is then posted on the information network system." Although such merging may allow a customer to see the total number of a particular good that is available throughout all distribution channels, such merging does not, for example, allow an individual salesperson to properly report his or her inventory to customers. Again, this teaches away from Applicant's invention, because it does not permit dissemination of accurate, real time inventory information. The Court of Appeals for the Federal Circuit has consistently held that it is "error to find obviousness where references 'diverge from and teach away from the invention at hand'." In re Fine, 5 U.S.P.Q. 2d 1596, 1599 (Fed. Cir. 1988). Applicant therefore respectfully requests that the Examiner withdraw his rejection of Claims 1-17 under 35 U.S.C. §103 in view of Peterson.

Finally, the Examiner appeared to assert that one or more elements of Applicant's claims are inherent in the references cited. However, the Court of Appeals for the Federal Circuit has consistently held that "[t]o establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." In re Robertson, 169 F.3d 743, 745 (Fed.Cir.1999) (internal citations omitted). None of the references teaches or suggests pushing information to a client. Therefore, the Examiner's inherency argument is inappropriate, and Applicant's invention is patentable over the references cited.

**Response to the Examiner's Definitions**

Applicant respectfully traverses the Examiner's attempt to define terms used in the claims. Such definitions constitute an attempt by the Examiner to construe the scope of the claims, and such construction is the province of the Courts after a Markman style hearing, not the Examiner. Applicant strongly rejects the Examiner's attempt to define terms such as client, Internet, server, and the like. In fact, the Examiner asserts as his basis for attempting to define such terms that "After careful review of the specification and prosecution history, the Examiner is unaware of any desire – either expressly or implicitly – by Applicant to be his own lexicographer and to define a claim term to have a meaning other than its ordinary and accustomed meaning." However, had the Examiner taken the time to carefully review the specification, it would have been clear that the definitions supplied by the Examiner are at odds with definitions supplied by Applicant in the specification. For example, at page 6, a client is defined as including "software, hardware, or combinations thereof, designed into or running on a computer, kiosk, telephone, set-top box, cell phone, handheld computer, or other electronic device, that allows a device to request data from a central point ("server")". By contrast, the Examiner's definition would limit the term "client" to a computer, which may result in a hardware-only interpretation. Similarly, the Examiner's definition of the Internet would limit the term to a network using the TCP/IP protocols, yet on page 6, Applicant has clearly defined the Internet as:

Internet 210 represents a communications medium through which data may be transferred between Browser 200 and Web Server 220. Such a communications medium may use wireless or wired means to transfer such data between Browser 200 and Web Server 220. Examples of such a communications medium include, but are not limited to, the high-speed, packet switched network commonly referred to as the Internet; a cellular telephone system; ultra-wide band data transmitters; microwave transmitters; standard telephone systems; satellite telephone systems; infrared transmitters; and bi-directional cable or satellite television systems.

RESPONSE

Examiner: FISCHER, Andrew J.

Serial No. 09/769,294

Atty. Docket No.: 53881.010100

Applicant asserts that all of the Bell Atlantic and Multiform Dessicants requirements have been met in Applicant's specification with respect to the terms defined by the Examiner, and insists that the Examiner withdraw the definitions. The definitions provided above are merely intended to be exemplary, and the terms should not be construed as limited to those definitions unless such a construction is found by the courts to be appropriate.

RESPONSE  
Examiner: FISCHER, Andrew J.

Serial No. 09/769,294  
Atty. Docket No.: 53881.010100

**CONCLUSION**

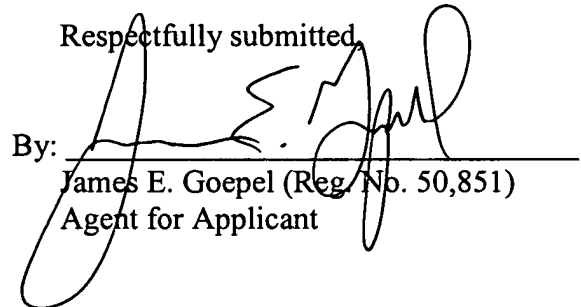
Having responded to all rejections set forth in the outstanding Office Action, it is submitted that Claims 1-3 and 5-19 are in condition for allowance and Notice to that effect is respectfully solicited. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is courteously requested to contact applicant's undersigned representative.

**AUTHORIZATION**

A Check for \$490.00 accompanied by a request for a three-month extension of time is enclosed. The Commissioner is also authorized to charge any additional fees associated with this filing, or credit any overpayment to Deposit Account No. **50-0653**.

Date: OCT. 6, 2004

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Respectfully submitted  
By:   
James E. Goepel (Reg. No. 50,851)  
Agent for Applicant

Filed: October 6, 2004